

December 6, 2013

Michael Millman  
P.O. Box 64637  
West Los Angeles, CA 90064

Re: Your Request for Informal Advice  
**Our File No. I-13-151**

Mr. Millman:

This letter responds to your request for informal advice regarding campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975), 1 FPPC Ops. 71.) Please note that all advice is based only on the provisions of the Act. We offer no opinion on the application of other laws that may apply. Also, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).)

This letter provides only general information as context to the attached documentation. If you would like a formal advice letter, please call or write. Nothing in this letter should be construed to evaluate any conduct that may have taken place.

### **FACTS**

Two Southern California apartment associations have affiliated PACs, and have asked you to review their structure. You are particularly concerned that the properly-registered PAC entities have no formal “committee” insofar as no group directs and controls funds. You are also concerned that the associations are too close to their affiliated PACs, and that there is an incentive to dip into PAC funds. You want to know how the reporting system works, and what reporting is necessary.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## QUESTIONS

1. What are the hypothetical reporting obligations if an 8,000 member group solicits annual dues and asks for a \$25 voluntary contribution to an affiliated PAC?

All contributions to a PAC must be disclosed. An entity that contributes \$100 or more in the aggregate during a calendar year must be itemized under Schedule A of the PAC's campaign statement. An entity that contributes less than \$100 during a calendar year will have their contributions disclosed as part of an unitemized total of all such contributions. Here, if the affiliated PAC receives only \$25 contributions, all contributions will be disclosed as an unitemized lump sum. If some individuals or entities contribute additional funds that aggregate to \$100 or more during the calendar year, then those individuals or entities must be itemized on Schedule A of the affiliated PAC's campaign statement.

2. How are reports filed with the Secretary of State?

The reports that we discussed are Form 460 Campaign Statements. Any amendments to the groups' registrations will require the PACs to complete a Form 410 Statement of Organization. Standard fillable forms are available on the Commission's website. Many filers choose to use online based disclosure software. A list of vendors is available on the Secretary of State's website.

3. What triggers an audit of a PAC? And how are audits conducted?

The Commission randomly selects 20 jurisdictions annually, and committees are randomly selected from within those jurisdictions. The Franchise Tax Board (FTB) then conducts extensive audits of committee finances. These audits are extremely thorough. All transactions are examined. The FTB may also initiate an audit if they receive a complaint or discover any discrepancies in reporting.

4. What is the corporate/agency structure necessary for a PAC to conduct its business?

A committee must have a treasurer in order to form. It may have assistant treasurers or principal officers as desired. Individuals that make decisions regarding a committee's expenditures are principal officers and must be identified on the Form 410. Regulation 18402.1, enclosed, provides guidance. The Act does not contain any mandated procedures for directing and controlling committee funds. Many PACs do, however, establish an executive committee or other procedure for making contributions or expenditures of PAC funds.

5. What firewalls are necessary between an association and its affiliated PAC regarding the use and administration of funds?

There are no firewall requirements under the Act, however there are some additional disclosure requirements for sponsored PACs. Directors, officers, or other insiders of a sponsoring organization are permitted to serve as the treasurer, assistant treasurer, or principal

officers of a sponsored PAC. Please note that all PAC funds must be used for political, legislative, or governmental purposes. (Sections 89510-89518.) This prohibits almost any transfer of PAC funds to the sponsoring organization. There are exceptions to this general rule: for instance, PAC funds may be transferred to its sponsoring organization to pay for lobbying expenses.

6. Can a PAC use its funds for administrative expenses? What can and cannot be an administrative expense? Are there any limits?

Yes, PAC funds are permitted to pay for legitimate PAC administrative expenses. (Regulation 18215(c)(16), enclosed.) The most common examples of PAC administrative expenses are payments to law firms for legal and compliance fees, and payment to the Secretary of State for registration and reporting fees. There are no limits to the use of PAC funds for PAC administrative expenses, but these payments must be reported.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Nicholas Sanders  
Legal Intern, Legal Division

NLS:jgl

**Enclosures:**

For Contributions-

Government Code § 84211

Regulation 18421.1- Disclosure of the Making and Receipt of Contributions

Regulation 18215 - Contribution Definition

Regulation 18215.1 - Contribution Definition; When Aggregated

For Audits-

Government Code §§ 90000-90007

Regulation 18401 - Required Recordkeeping

Regulation 18991- Audits of Campaign Reports and Statements of Local Candidates and Their Controlled Committees

Regulation 18993 - Contain in Detail

Regulation 18994 - Auditing and Investigations

Regulation 18995 - Standards and Guidelines for Auditing Statements and Reports

Regulation 18996 - Scope of Audits and Investigations

For PAC Structure-

Government Code §§ 84100-84101

Regulation 18402.1 - Principal Officers

Regulation 18410 - Statement of Organization

Regulation 18419 - Sponsored Committees

For Use of PAC Funds-

Government Code §§ 89510, 89512.5